# INDEX


PAGE

Statement ..... 1
Argument ..... 3
Conclusion ..... 13


## Table of Cases Cited


Banco Mexicano v. Deutsche Bank, 289 Fed. 924 ..... 9
Becker Steel Co. v. Cummings, 296 U. S. 74 ..... 10
Caminetti v. U. S., 242 U. S. 470 ..... 6
Central Union Trust Co. v. Garvan, 254 U. S. 554 ..... 11
Crooks v. Harrelson, 282 U. S. 55 ..... 6
Draeger Shipping Co. v. Crowley, 49 Fed. Supp. 215 .. 11
Fleischmann v. United States, 270 U. S. 349 ..... 5
Garvan v. $20,000 Bonds, 265 Fed. 477 ..... 10, 11
Helvering v. City Bank Co., 296 U. S. 85 ..... 6
Holy Trinity Church v. United States, 143 U. S. 457 .. 4
Ozawa v. United States, 260 U. S. 178 ..... 4
Pennsylvania R. Co. v. International Coal Co., 230 U. S. 184 ..... 6
Stoehr v. Wallace, 255 U. S. 239 ..... 11
Taft v. Commissioner, 304 U. S. 351 ..... 6
United States v. American Trucking Corporation, 310 U. S. 534 (1940) ..... 5
U. S. v. Katz, 271 U. S. 354 ..... 5
U. S. v. Missouri Pacific R. Co., 278 U. S. 269 ..... 6
Van Camp & Sons v. American Can Co., 278 U. S. 245. 6
Wilbur v. U. S., 284 U. S. 231 ..... 6


## Other Authorities Cited


Trading With the Enemy Act:
Section 5 ..... 8, 9
Section 7 ..... 8
Section 9 ..... 1, 2, 7, 9
Subsection 5(b) ..... 2, 10, 11, 11n, 12n
Subsection 9(a) ..... 1, 8, 9, 10, 11, 11n, 12n, 13
Subsection 9(c) ..... 2, 7, 8, 9, 11, 11n, 13
Subsection 9(f) ..... 10, 13

IN THE

# Supreme Court of the United States

OCTOBER TERM—1944

No. 1271

JAMES E. MARKHAM, Alien Property Custodian, and W. ALEXANDER JULIAN, Treasurer of the United States,

*Petitioners,*

*vs.*

HARTWELL CABELL,

*Respondent.*

## BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

### Statement

This action was brought upon the authority contained in Subsection 9(a) of the Trading With the Enemy Act. That subsection, which was originally enacted as Section 9 of the Act, provides that "Any person • • • to whom any debt may be owing • • • may file • • • a notice of his claim • • • and the President • • • may order the payment • • • of the money • • • held." If the President does not order payment, the "said claimant may institute a suit in equity • • • to establish the debt so claimed and if so established the court shall order the payment • • • to which the • • • claimant is entitled."

In the District Court, a motion was made on behalf of the petitioners here (defendants below), to dismiss the amended complaint upon four grounds as follows:

"(a) The amended complaint shows that the alleged debt upon which plaintiff's claim is based was not owing to or owned by the plaintiff prior to October 6, 1917, as required by Section 9(e) of the Trading With the Enemy Act, as amended;

(b) The amended complaint discloses that a notice of the alleged claim could not have been filed or an application made with respect thereto prior to the date of the enactment of the Settlement of War Claims Act of 1928, as required by Section 9(e) of the Trading With the Enemy Act, as amended;

(c) The remedies provided by Section 9 of the Trading With the Enemy Act, as amended are not applicable to any action which may have been taken by the Alien Property Custodian under Section 5(b) of the said Act, as amended by Title III of the First War Powers Act, 1941; and

(d) The plaintiff has not exhausted the administrative remedies available to him with respect to any action which may have been taken by the defendants, or either of them, or with respect to any claim which may have arisen out of any such action."

At the hearing upon this motion, counsel for the defendants informed the Court that grounds (c) and (d) would not be insisted upon and might be considered as withdrawn, and the argument was limited to the first two grounds, *i. e.*, the effect of Subsection 9(e) of the Act as amended, upon the rights of creditors of an enemy whose property had been taken over by the Alien Property Custodian during the present war.

The District Court granted the motion and dismissed the amended complaint. The Circuit Court of Appeals unanimously reversed the decision of the lower court, and

sustained the right of plaintiff below to maintain his action. The Circuit Court of Appeals held that where an amendment is clearly intended to apply only to seizures during the first World War, it must be so construed and should be disregarded when necessary in order to give effect to the permanent provisions of the Statute. On this point in the course of his opinion Judge LEARNED HAND said:

> "If we do not so read it the result is really nonsense, for the remedy given in Subdivision (a) which is prospective, is completely defeated by Subdivision (e). Nobody can seriously believe that a general plan designed to be successively suspended and revived, as peace and war should alternate, was meant to be permanently mutilated by a statute of limitation expressly made applicable to only the first of its phases. The defendants have no answer except to say that we are not free to depart from the literal meaning of the words however transparent may be the resulting stultification of the scheme or plan as a whole.
>
> Courts have not stood helpless in such situations; the decisions are legion in which they have refused to be bound by the letter when it frustrates the patent purpose of the whole statute. We need cite no others than the more recent of those in the Supreme Court which have followed, *Holy Trinity Church* v. *United States*, 143 U. S. 457."

## Argument

The plaintiff (respondent) rested his case in the courts below upon the fundamental rule governing the construction of statutes which has been repeatedly announced and adhered to by this Court. That rule construes the duty of the Court to be to ascertain and give effect to legislation, but that where adherence to the strict letter of a statute would lead to injustice, absurdity or to contradictory provisions, it is the duty of the Court to ascertain the true meaning and intent of a statute and be guided thereby in

its decisions. The opinion of the Circuit Court of Appeals (Transcript, p. 26) cites a number of these authorities. We quote from several of them.

The *Holy Trinity Church* v. *United States*, 143 U. S. 457, has generally been considered the leading case on the subject. There Trinity Church (incorporated) had entered into a contract in England with one E. Walpole Warren, a clergyman resident of England, whereby he was to remove to the United States and become the Rector of Trinity Church. There was a statute in existence at that time forbidding the importation and immigration of foreigners under contracts or agreements made abroad to perform labor in the United States. The government sued to recover the penalty prescribed by the Act and the Circuit Court sustained its contention.

The Supreme Court unanimously reversed the Circuit Court in a decision by Justice BREWER. He said in part:

> "It must be conceded that the act of the corporation is within the letter of this section. * * * It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act."

In *Ozawa* v. *United States*, 260 U. S. 178, the Court had before it the construction of a statute controlling the naturalization of foreigners. The Court in an opinion by Mr. Justice SUTHERLAND said (p. 194):

> "It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

In *Fleischmann* v. *United States,* 270 U. S. 349, the Court, in construing a statute known as "The Materialmen's Act," said:

> "The strict letter of an act must, however, yield to its evident spirit and purpose, when this is necessary to give effect to the intent of Congress. (Citing *Holy Trinity Church* v. *U. S.,* 143 U. S. 457, and *Ozawa* v. *U. S.,* 260 U. S. 178), and unjust or absurd consequences are, if possible, to be avoided."

In *U. S.* v. *Katz,* 271 U. S. 354, the Court said in construing a criminal statute:

> "General terms descriptive of a class of persons made subject to a criminal statute may and should be limited where the literal application of the statute would lead to extreme or absurd results, and where the legislative purpose gathered from the whole Act would be satisfied by a more limited interpretation." (Citing cases.)

One of the recent decisions of this Court on this point is *United States* v. *American Trucking Corporation,* 310 U. S. 534 (1940). From the opinion of Mr. Justice REED (pp. 542-3), we quote the following:

> "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery

of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this court has looked beyond the words to the purpose of the act." (Citing *Taft* v. *Commissioner*, 304 U. S. 351, 359; *Helvering* v. *City Bank Co.*, 296 U. S. 85, 89; *Wilbur* v. *U. S.*, 284 U. S. 231, 237; *Crooks* v. *Harrelson*, 282 U. S. 55, 60; *U. S.* v. *Missouri Pacific R. Co.*, 278 U. S. 269, 278; *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245, 253; *Caminetti* v. *U. S.*, 242 U. S. 470; *Pennsylvania R. Co.* v. *International Coal Co.*, 230 U. S. 184, 199.)

The minority of the Supreme Court in that case voted for affirmance of the Court below "for the reason stated in the opinion of the District Court, 31 Fed. Supp. 35." The syllabus of the decision in the Circuit Court of Appeals (Paragraph 5) restates the rule as follows:

"Statutes will be annulled by construction only where effect of giving words their clear meaning would offend the moral sense or involve injustice, oppression or absurdity."

That Court held, however, that in the case before them, no injustice, oppression or absurdity was involved; and the minority of this Court concurred.

Counsel for the petitioners in the case at bar frankly admit that "it is true that the limiting language of Section

9(e) was adopted with reference to property vested during the last war" (Petition, p. 7). Nowhere in their petition is the rule of statutory construction, laid down in the authorities above quoted and upon which we rely, questioned.

To avoid application of the rule in this case a curious argument is resorted to. On page 7 of the Petition for Certiorari, in commenting upon 9(e) our opponents say:

> "But the conclusion is nevertheless inescapable that the device employed by Congress to effectuate that limitation, operated by its terms to deprive the general language of Section 9(a) of the continuing vitality it would otherwise have had."

And again on page 15:

> "The inescapable conclusion is that Congress acted upon the assumption that the creditor's remedy provided in Section 9(a) had been withdrawn by 9(e). We submit that any doubts in the construction of Section 9(e) should be resolved to support rather than defeat the unmistakably indicated policies of Congress."

The amendments of Section 9 of the Trading With the Enemy Act which include Subsection 9(e) (Subsections (b), *et seq.*), were adopted in June, 1920, nearly two years after the end of World War I. An examination of these amendments will indicate clearly that their principal purpose was to extend the rights of recovery against property seized during the first World War to classes of claimants not included in the law as originally enacted. These new classes, for example, gave the right of recovery against property in the hands of the Alien Property Custodian, of women who had been born in neutral countries, but had married Germans. Another class gave the right to recover their property, to enemies who had been interned in this country. Diplomatic representatives of enemy countries or their allies, also were given certain rights and exemptions, and there were a number of other classes.

By Subsection 9(e) as originally enacted, it was provided that no return of property or debts should be allowed thereunder "unless it was owing to or owned by claimant prior to October 6th, 1917" (the date of the enactment of the original Trading With the Enemy Act).

Several further amendments of Subsection 9(e) were enacted and became law in the years 1921-2. These amendments extended the times within which suits against the Alien Property Custodian and Treasurer could be brought for the purpose of enforcing rights against the property seized. By the Settlement of War Claims Act of 1928, the period within which suits could be brought after the end of the war, which by the amendment of December 27th, 1922, of Subsection 9(e), had been extended to thirty months, was deleted, and the subsection was further amended to allow recovery for debts if owing to and owned by the claimant prior to October 6th, 1917. The right to sue was further limited in this last amendment to apply only to debts as to which notice of claim had been filed or application therefor had been made prior to the enactment of the Settlement of War Claims Act of 1928. It is this last amendment which is relied upon by our adversaries as, in effect, destroying Subsection 9(a) of the Trading With the Enemy Act.

In the first place it is to be borne in mind that the Trading With the Enemy Act was intended to be, and is, an integral part of our general law. The intention was that the law should control not only as to the war then in progress but as to future wars that might occur. Thus, the Congress in 1941 in granting to the President broader powers over foreign owned property than those given by Section 7 of the original Act (Title III, First War Powers Act) did so by way of amendment to Section 5 of the original Trading With the Enemy Act. The President in his preamble to Executive Order No. 9095 (March 11th, 1942)

whereby the Office of the Alien Property Custodian was reestablished, declared that:

> "By virtue of the authority vested in me by the Constitution, by the Trading With the Enemy Act of October 6th, 1917, as amended, by the First War Powers Act, 1941, and as President of the United States, it is hereby ordered as follows:"

Similar references clearly recognizing the Act as a part of the general law of our country, will be found in other Presidential Proclamations issued during the present war.

The Settlement of War Claims Act of 1928, which included the last amendment of Subsection 9(e) of the Trading With the Enemy Act was, on the contrary, clearly intended not as a general law but a special statute which was to control the disposition of the property taken over by the Alien Property Custodian during World War I.

In *Banco Mexicano* v. *Deutsche Bank*, 289 Fed. 924, the Court of Appeals of the District of Columbia held that Subsection 9(a) (Section 9 of the Act as originally passed), "is an *enabling* enactment granting certain remedies to certain parties, while Subsection (4) is a *limiting* or *restrictive* enactment designed to cut down the provisions of Subsection (a)." (Emphasis ours.) Does it not logically follow that if limitations or restrictions imposed by 9(e) are held not to apply in a given case such as this, the enabling stature must be given full force and effect?

In their petition to this Court for a Writ of Certiorari our adversaries lay great stress upon the amendment to Section 5 of the Trading With the Enemy Act by the First War Powers Act whereby the powers of the President as to seizure of property is extended to include any property in which any foreign country or a national thereof has an interest, coupled with the further power to use, administer, liquidate, sell or otherwise deal with the same in the interest of and for the benefit of the United States.

It is to be borne in mind that this power to seize and deal with alien property granted under the amendment of Section 5(b) is not confined to war times, but may be exercised during any other period of "national emergency." It is further to be noted that it extends to all property belonging to any national of a foreign country, whether an enemy or neutral or even an ally. The term "national" is given an exceedingly broad definition in the Act itself.

Section 5(b) as amended by the First War Powers Act contains no remedial provisions and the only section of the Trading With the Enemy Act providing any remedy to a person whose property has been wrongfully seized, is contained in Subsection 9(a). Section 9 as originally enacted, contained the following provision:

> "Except as herein provided the money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any Court."

In later amendments this language was transferred to Subsection 9(f).

In *Becker Steel Co.* v. *Cummings*, 296 U. S. 74, it was held that the dominant purpose of the Trading With the Enemy Act was to give to citizens and alien friends adequate remedy for invasion of their property rights in the exercise of war powers by the Government. The Court held in that case that a statute giving to a non-enemy a remedy for the seizure of his property as a war measure must be broadly construed to give effect to its remedial purpose.

In *Garvan* v. *$20,000 Bonds*, 265 Fed. 477, 479, the Circuit Court of Appeals of the Second Circuit, held that:

> "If persons not alien enemies or allies of alien enemies were given no means to protect their interests in such property, the seizure would be unconstitutional as without due process of law; but they are given such remedies under Section 9."

This decision was affirmed by this Court (*Central Union Trust Co.* v. *Garvan*, 254 U. S. 554).

Several of the lower courts have considered this question. In one of these cases (*Draeger Shipping Co.* v. *Crowley*, 49 Fed. Supp. 215), Judge BONDY in that case said:

> "The First War Powers Act, 1941, itself does not provide any remedy whatsoever for the return of property erroneously seized as property of a national of a foreign or enemy country. If construed as unaffected by Section 9(a), it would depend upon the will of the President or his representative whether there should be even an administrative remedy and if so what it shall be.
>
> Notwithstanding that the Trading With the Enemy Act of 1917 was a war measure, the seizures by the Alien Property Custodian under it before the 1941 amendment were held to be constitutional only because adequate remedies were provided by the Act for a return of the property or its proceeds in case the property was erroneously seized." (Citing *Stoehr* v. *Wallace*, 255 U. S. 239; *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554.)

If the argument advanced herein that Subsection 9(a) has been practically abrogated by Subsection 9(e) is sustained, then it follows that the owners of property seized by the Alien Property Custodian under Section 5(b) are absolutely without remedy.*

* An interesting sidelight upon the argument advanced in this case that by reason of the enactment of 9(e) Subsection 9(a) has ceased to exist, is to be found in two articles dealing with the constitutionality of Section 5(b) of the Trading With the Enemy Act as amended by the First War Powers Act, pub-

Considerable space is devoted in the petition for certiorari to warning this Court of the volume of litigation against the Alien Property Custodian under Section 9(a) which would result in a refusal of the writ, and of the elaborate machinery which would have to be set up to take care of such litigation. Also it is urged that such a ruling would result in priorities and inequities in the distribution of seized property where the claims against it should total more than the value of the property.

As to the first argument, it is to be observed that we have here the question of the legislative intent in the enactment of certain laws. The insistence that such intent, if found to exist, should be ignored, because it would result in a multiplicity of suits, and the increased expenses thereby incurred is, it is submitted, a rather obvious *argumentum ad hominem.*

As to the second, from time immemorial the vigilance of a citizen in protecting his rights has been epitomized in our courts by the old saying "First come, first served." There is nothing in these statutes as they now read to authorize the Alien Property Custodian to treat property seized by him as analogous to a bankrupt estate, and to

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lished in Duke University Law Periodical "Law and Contemporary Problems," Volume XI, No. 1. The first article (p. 135) is by Mr. George A. McNulty, who, until recently as Special Assistant to the Attorney General, was Chief of the Alien Property Custodian unit in the Department of Justice. The second article is by Mr. Herbert Wechsler, Assistant Attorney General in charge of the War Division of the Department of Justice. In both articles, for the purpose of sustaining the constitutionality of Section 5(b) Subsection 9(a) is treated as being still in full force and effect. In Mr. Wechsler's article (p. 149) which is in effect a criticism of doubts expressed by Mr. McNulty as to the constitutionality of Section 5(b) when applied to the property of Americans and non-enemy aliens, we read:

> "It may be, therefore, that the substantive powers conferred by Section 5(b) may be divorced in various respects from the limitations upon similar powers as they are embodied in other provisions of the Trading With the Enemy Act. But the history of the legislation is completely silent with respect to the problem of remedies. I read this to mean that Congress delegated such powers as it did against the background of traditional remedies, including the remedy for unauthorized seizure provided by Section 9(a) in terms which do not restrict its continuing vitality."

retain the same, thereby delaying diligent creditors, until, in course of time, all claims may be ascertained and a proper distribution made.

We have here a simple question as to the meaning of certain statutory enactments and their interrelation. The purpose of Congress in enacting 9(e) was as our adversaries admit, to limit its application "to property vested during the last war" (Petition, p. 7). In the face of this admission the argument that its effect as to seizure of property during World War II is to render null and void Section 9(a) of the Act, wherein the sole remedy to owners of property seized and of creditors, is provided for, is, to say the least, rather fantastic.

From the standpoint of the Government itself, since 9(a) is the only remedial section contained in the Act, and because of the provision in the Act (Section 9(f)), that the only relief to non-enemy owners and creditors against property seized or vested by the Alien Property Custodian shall be that provided in the Act itself, this argument if sustained will give rise to a serious condition. It would open the way for attacking every vesting or seizure of non-enemy property during World War II upon the ground that the law as it stands is unconstitutional under the due process clause of the Constitution.

## CONCLUSION

**It is submitted that the petition for writ of certiorari should be refused.**

CHARLTON OGBURN,
*Counsel for Respondent.*

HARTWELL CABELL,
*Respondent Pro Se.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM—1945

**No. 76**

JAMES E. MARKHAM, Alien Property Custodian, and W. ALEXANDER JULIAN, Treasurer of the United States,

*Petitioners,*

*against*

HARTWELL CABELL,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF FOR RESPONDENT

HARTWELL CABELL,
*Respondent Pro se.*

CHARLTON OGBURN,
*Counsel for Respondent.*

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# INDEX


PAGE

Summary of Argument ..... 1

Argument:

I—The several arguments contained in the Government's brief upon the basis of which this Court is urged to hold that Section 9(e) of the Trading With the Enemy Act as finally amended applies to the claim against enemy property upon which this suit was brought are each of them directly opposed to concepts which form the basis of our form of government and for that reason are untenable ..... 3

II—The plaintiff's suit is based not upon a mere debt claim, but under the facts alleged in the amended complaint and admitted by the motion an equitable assignment whereby a property right in the funds in the possession of the New York Superintendent of Insurance was created and is vested in plaintiff below ..... 16

Facts ..... 16

Conclusion ..... 24

## Table of Cases Cited

PAGE

Banco Mexicano v. Deutsche Bank, 289 Fed. 924, 263 U. S. 591 ..... 9
Bates v. Salt Springs National Bank, 157 N. Y. 322 ..... 23
Becker Steel Co. v. Cummings, 296 U. S. 74 (1935) ..... 11
Brill v. Tuttle, 81 N. Y. 454 ..... 23
Cummings v. Deutsche Bank, 300 U. S. 115 ..... 11
Curtis v. Walpole Tire & Rubber Co., 218 Fed. 145 ..... 18
Dier, In re, 296 Fed. 816 ..... 19, 22
Ehrich v. Eisenlohr, 265 U. S. 584 ..... 22
Holy Trinity Church v. U. S., 143 U. S. 457 ..... 3, 4
Jacobs v. United States, 290 U. S. 13 (1933) ..... 11
Lauer v. Dunn, 115 N. Y. 405 ..... 23
License Tax Cases, 5 Wall. 462 ..... 5
Muller v. Kling, 209 N. Y. 239 ..... 23
Ozawa v. United States, 260 U. S. 178 ..... 4
People, In the Matter of (Russian Reinsurance Company), 225 N. Y. 415 ..... 20
Russian Volunteer Fleet v. United States, 282 U. S. 481 (1931) ..... 12
Searl v. District No. 2, 133 U. S. 553 ..... 11
United States v. American Trucking Corporation, 310 U. S. 534 (1940) ..... 4
United States v. Jones, 109 U. S. 518 ..... 11
United States v. Lynah, 188 U. S. 445 ..... 12
Wayman v. Southard, 10 Wheat. 1 ..... 5
Weniger v. Fourteenth Street Store, 191 N. Y. 423 ..... 23

## Other Authorities Cited

PAGE

Constitution of the United States, Fifth Amendment ..... 11, 12, 14, 15

The Federalist; Nos. 47 to 51 ..... 5

Trading With the Enemy Act:
- Section 3(d) ..... 7, 8
- Section 5 ..... 6, 7, 10, 11, 12, 13
- Section 9(a) ..... 2, 3, 6, 7, 8, 9, 10, 14, 15, 16, 22
- Section 9(e) ..... 2, 3, 6, 8, 9, 16, 22
- Section 13 ..... 8
- Section 14 ..... 8

5 Corpus Juris, p. 837 ..... 18, 20

6 Corpus Juris Sec., p. 1101 ..... 20

28 U. S. C. Sec. 347(a) ..... 3

IN THE

# Supreme Court of the United States

OCTOBER TERM—1945

**No. 76**

JAMES E. MARKHAM, Alien Property Custodian, and W. ALEXANDER JULIAN, Treasurer of the United States,

*Petitioners,*

*against*

HARTWELL CABELL,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF FOR RESPONDENT

### Summary of Argument

The questions to be discussed are raised by a motion to dismiss the Amended Complaint filed by the plaintiff in the District Court. The motion recited four grounds for dismissal (Tr. 7-8). The third and fourth grounds, designated (c) and (d) in the notice of motion, were, on argument formally withdrawn by petitioners' counsel (defendants below, Tr., p. 1), and do not concern us here. The remaining grounds designated as (a) and (b) read as follows:

"(a) The amended complaint shows that the alleged debt upon which plaintiff's claim is based, was not owing to or owned by the plaintiff prior to October 6th, 1917, as required by Section 9(e) of the Trading With the Enemy Act as amended;

(b) The amended complaint discloses that a notice of the alleged claim could not have been filed or an application made with respect thereto prior to the date of the enactment of the Settlement of War Claims Act of 1928, as required by Section 9(e) of the Trading With the Enemy Act as amended."

In both lower courts, the plaintiff opposed the motion to dismiss on two grounds. The first was that the various forms in which the amendment 9(e) was first enacted and thereafter reenacted, until it took final form in 1928 as part of the Settlement of War Claims Act, clearly indicated that the Congress intended to confine its application to claims against enemy property taken over by and in possession of the Alien Property Custodian during World War I, and that as to future wars and property of enemies seized during such wars, the provisions in Section 9(a) of the Trading With the Enemy Act which gave certain rights to United States citizens and citizens or subjects of our allies, with respect to enemy property, remained in force as an integral part of the general statute entitled the Trading With the Enemy Act which was first enacted October 6th, 1917.

The second ground urged by plaintiff below was that the claim sued on was not a mere debt; that the endorsement on the claim itself by the Italian insurance company, which was filed with the New York Superintendent of Insurance, while the assets of the American Branch of Assicurazioni Generali were in his possession for liquidation under the New York Laws, and before a state of war existed between the United States and Italy, was in effect an equitable assignment of these assets up to the full value of the claim, with interest until paid.

Since the Circuit Court of Appeals unanimously held that Sub-Section 9(e) of the Trading With the Enemy Act was confined in its application to debts owed to former enemy owners of property seized by the Alien Property Custodian during World War I, and left a full right of recovery upon a simple debt under Sub-division 9(a), the contention by the plaintiff below that his claim was based upon a property right and not a more debt was not necessary for a determination of the case in his favor, and the Court did not pass upon that question or even mention it in its opinion. Under the broad jurisdiction conferred upon this Court in certiorari proceedings (28 U. S. C. Sec. 347(a)), we believe this point is open to consideration by this Court.

## ARGUMENT

### I

**The several arguments contained in the Government's brief upon the basis of which this Court is urged to hold that Section 9(e) of the Trading With the Enemy Act as finally amended applies to the claim against enemy property upon which this suit was brought are each of them directly opposed to concepts which form the basis of our form of government and for that reason are untenable.**

There is little to add to the comprehensive opinion of the Court below, in its treatment and application of the decision of this Court in the leading case (*Holy Trinity Church* v. *U. S.*, 143 U. S. 457), and the numerous decisions cited by the Court in its opinion, in which the rule of statutory construction announced in that case has been repeatedly reaffirmed and enforced by this Court.

In the *Holy Trinity Church* case, by the unanimous decision of this Court, the fundamental rule in construing

statutes as announced in the opinion of Mr. Justice BREWER is to ascertain and give effect to legislation, but that where an adherence to the strict letter would lead to injustice, to absurdity or to contradictory provisions, it is the duty of the Court to ascertain the true meaning and be guided thereby in its decision.

In *Ozawa* v. *United States*, 260 U. S. 178, the Court had before it the construction of a statute controlling the naturalization of foreigners. The Court, in an opinion announced by Mr. Justice SUTHERLAND, said (p. 194):

> "It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

One of the cases cited by the Court below deserves a word of explanation, since this Court in that case by a vote of five to four applied the rule laid down in the *Trinity Church* case to the facts before it. We refer to the case of *United States* v. *American Trucking Corporation*, 310 U. S. 534 (1940), which is cited in the Government's brief (p. 23). An examination of the reports show that the correctness of the doctrine of the *Trinity Church* case was not questioned by any member of the courts which considered the case, but the minority of four justices of this Court agreed with the decision of the Circuit Court of Appeals in holding that the facts before them did not call for its application. Five of the members of this Court took the other view and the rule of construction laid down in the *Trinity Church* case was applied.

By way of preface to our consideration of the arguments advanced to overturn the decision of the Court below, several axioms that lie at the basis of our form of government must be borne in mind. The sovereign powers of our federal government are distributed between the Congress, the Executive Department and the Federal Judiciary. To Congress is given the power of federal legislation subject to limits fixed by the Constitution. The Federal Judiciary is clothed with the duty of interpreting and enforcing provisions of the Constitution and the Acts of Congress. Our courts may apply and enforce the constitutional limitations to laws adopted by Congress, but in their interpretation or enforcement of a statute passed by the Congress which has become a law, they are bound by the purpose and intent of the legislative branch of the government in framing and adopting that law. They can neither ignore such intent when plain, nor supply deficiencies in the law as passed. The doctrine of the separation of powers of the executive, legislative and judicial branches of the government, is fundamental. One branch may not encroach upon either of the others except in so far as permitted by the Constitution. (See the Federalist, Nos. 47 to 51.)

This principal is axiomatic. In the words of Chief Justice MARSHALL: "The legislature makes, * * * and the judiciary construes the law." *Wayman* v. *Southard*, 10 Wheat. 1, 46.

In the *License Tax* cases, 5 Wall. 462, 469, Chief Justice CHASE, who delivered the opinion of the Court, said:

> "This court * * * has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient, as politic or impolitic. Considerations of that sort must, in general, be addressed to the legislature. Questions of policy determined there are concluded here."

Let us apply these principles to this case. The Court below held that 9(e) was intended by Congress to apply solely to questions arising out of the seizure of enemy property by our government during World War I.

In the petition for certiorari in this case (p. 7) our adversaries say:

> "It is true that the limiting language of Section 9(e) was adopted *with reference to property vested during the last war.*" (Emphasis supplied.)

At the close of the argument of this case in the Circuit Court of Appeals, the presiding judge directly asked counsel who argued the case for the government, whether there could be any doubt that the intention of Congress in enacting 9(e) was to confine its effect to claims against enemy property seized during World War I, and the answer was unequivocally "No, there could be no doubt on that point."

Briefly epitomized, the arguments of our opponents for reversal of the Court below and the literal enforcement of 9(e), are as follows:—(a) That by the enactment of 9(e) Congress intended to eliminate from the Trading With the Enemy Act all remedies of creditors against enemy property seized by our government except claims against property seized in the First World War, leaving to some future Congress in the event of a future war to grant such rights to creditors as the Congress might deem expedient at that time.

(b) That by reason of the amendment of Section 5 of the Trading With the Enemy Act contained in the First War Powers Act 1941, which amendment authorized the seizure of non-enemy alien property, but which contained no remedial provisions as to such property in favor of American citizens, it would be grossly unfair and discriminatory to permit the exercise of remedies as to enemy property provided for in Sub-Section 9(a). To use the

exact language employed (Government's brief, p. 7), "they would, for example, afford no remedy for creditors of friendly aliens whose property may have been vested for protective or conservatory purposes only, and at the same time they would permit creditors of enemies to interfere with the wartime utilization by the United States of property in this country of enemy origin."

(c) That to hold that Section 9(a) is still in force and in view of the decisions of the courts following the First World War that the controlling principle of payment of debts out of enemy property is "first come first served," is to invite a multiplicity of suits which would result in a disorderly administration of enemy property in the hands of the Alien Property Custodian.

(d) That the office of Alien Property Custodian has been operated during the present war upon the assumption that Congress has purposely abstained from adopting a law of procedure until problems of war settlements and international relations growing out of enemy property seizures and vestings under Section 5 as amended, can be dealt with at the same time, and such an assumption when acted on by the administrative branch of our government should control this Court.

These arguments will be dealt with in the order named:

(a)

That the Trading With the Enemy Act was intended as a general statute to control not only the war in progress at the time of its enactment, but any and all wars that might occur in the future, needs no argument. In the law itself as originally passed, any provisions intended to be limited in its effect to the then current war contained words indicating that purpose. For instance, Section 3(d) reads: "*Whenever during the present war,* the President shall

deem that public safety demands it, etc." Section 11 reads: "*Whenever during the present war* the President shall find the public safety so requires and shall make proclamation thereof, etc." (see also the same language used in Sections 13 and 14).

An examination into the circumstances under which original Section 9 became Sub-Section 9(a) and Sub-Sections 9(b) to 9(q), both inclusive, were added from time to time, reveals clearly that everyone of these Sub-Sections related to property taken over in the First World War. For example the general law as originally enacted named no particular enemy, but merely used the term "the enemy," so as to bring the law into force regardless of who might be our enemies in future wars. In the sub-sections, the enemies intended to be affected by the amendments are named specifically as Germany, Austria, Hungary, or Austria-Hungary. Finally 9(e) is in 1928 engrafted as an integral part of the Settlement of War Claims Act. This later act was obviously passed, not as a general statute, but as a special statute to control the ultimate disposition of the German, Austrian and Hungarian property then in the hands of the Alien Property Custodian.

The language of 9(e) itself ties the enactment into this special statute. It provides:

> "Nor shall a debt be allowed *under this Section unless notice of the claim has been filed or application therefor has been made prior to the date of the enactment of the Settlement of War Claims Act of 1928.*" (Emphasis supplied.)

This obvious intention of Congress in adopting 9(e) to confine its application to claims against enemy property seized during World War I, has, as we have pointed out *supra*, been frankly admitted in the petition for certiorari in this case (p. 7):

> "It is true that the limiting language of Section 9(e) was adopted with reference to property vested during the last war."

Yet, in spite of this admission, our adversaries insist that the device employed by Congress to effectuate that limitation, operated by its terms to deprive the general language of Sub-Section 9(a) of any continuing vitality it might otherwise have had.

In *Banco Mexicano* v. *Deutsche Bank,* 289 Fed. 924, the Court of Appeals of the District of Columbia had before it a question involving the construction of Sub-Section 9(e). The claim upon which that case was based arose out of World War I. The only question was whether plaintiff, a Mexican bank and therefore an alien, was limited in its right to recover by the provision in the subsection requiring proof that the claim arose with reference to money or other property held by the government officers. In the course of its opinion, page 298, that Court said:

> "Sub-Section (a) is an enabling enactment granting certain remedies to certain parties; while Sub-Section (e) is a limiting or restricting enactment designed to cut down the provisions of Sub-Section (a)."

In that case, since the property was seized during World War I, the Court applied the limitation and held that since Sub-Section (e) restricted the right to collect a debt against enemy property by claimants other than citizens of the United States to debts which had arisen with reference to money or other property held by the Alien Property Custodian or Treasurer of the United States under the Act, and there was no proof of this fact.

The case was appealed to the Supreme Court of the United States, 263 U. S. 591, which Court, after specifically stating the ground of decision in the Court below as quoted above, said: "We concur". (see p. 601.).

It is submitted that an addendum to a general law which, as to certain claims, limits the remedy prescribed in the law as originally enacted, in the absence of express language indicating a different purpose, is a mere restriction, and when not applicable, by its terms, to a given case, leaves the original law in full force as to that case.

(b)

The next argument is that in view of the amendment of Section 5 of the Trading With the Enemy Act by the First War Powers Act (1941), whereby the President is authorized to seize non-enemy alien property, to hold that 9(a) is in force will cause discrimination among classes of creditors of aliens and will greatly interfere with the use by the United States of the property of aliens seized during World War II.

In the argument on this point enemy property and property of alien governments and their citizens (non-enemy) seem to be grouped together as one class. There is no authority for this classification.

In the first place—the remedies allowed creditors by Sub-Section 9(a) are expressly restricted to enemy property. The language of the section is:

> "Any person not an enemy or ally of enemy • • • to whom any debt may be owing from an enemy or ally of enemy • • • may file with the said Custodian a notice of his claim under oath, etc."

The right of a nation to seize enemy property in wartime is universally recognized. The seizure once being effected, a sovereign may do with such property whatever it wishes. It may confiscate it, destroy it, sell it or use it for any purpose whatever. The former owners of such property have no redress. If a sovereign allows its own subjects or citizens or those of friendly countries to be paid out of such property any debt that may be due them

from the former owners of the seized enemy property, there is nothing to prevent it, and if errors occur in connection with such payments, there is no liability to anyone on the part of the sovereign.

The foreign owned property which has been seized by the government under the powers granted by Section 5 of the Trading With the Enemy Act, as amended, by the First War Powers Act (1941), comes under another category. The right of a sovereign to seize and convert to his own use either in war or in peacetime any property of its own citizens or friendly aliens where such property is within its jurisdiction, is derived from the sovereign power of "eminent domain." That power in many countries is unlimited. In the United States it is limited by the Fifth Amendment of the Constitution which provides:

> "* * * Amendment 5, * * * Nor shall anyone * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

In *Jacobs* v. *United States*, 290 U. S. 13 (1933) it was held that the obligations of the United States to pay just compensation for private property taken by eminent domain rests upon the Fifth Amendment independent of any statute or express promise. A promise was held to be implied because of the duty imposed by the amendment.

In *Becker Steel Co.* v. *Cummings*, 296 U. S. 74 (1935) and also *Cummings* v. *Deutsche Bank*, 300 U. S. 115, it was held that such a promise was implied where the property of a non-enemy alien has been seized under the Trading With the Enemy Act as enemy property.

In *Searl* v. *District No. 2*, 133 U. S. 553, 562, this Court held that the right of eminent domain is an incident of sovereignty and requires no constitutional recognition, and in *United States* v. *Jones*, 109 U. S. 518, it was held that this clause in the Constitution which provided for just

compensation for property taken is merely a limitation upon the use of the power of eminent domain.

In *United States* v. *Lynah*, 188 U. S. 445, the doctrine of eminent domain was again defined. The Court there held that all private property is subject to the necessities of government and that the right of eminent domain underlies every element of property right. The decision was that the government may take personal or real property whenever its necessities or the exigencies of the occasion demand; but that the Fifth Amendment of the Constitution guarantees that when this governmental right of appropriation, this asserted paramount right is exercised, it must be attended by compensation.

In *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481 (1931), it was expressly held that where our government takes property of an alien friend by eminent domain, it must pay the equivalent of full value thereof. The Court there held that the fact that property of our citizens may be confiscated in that alien's country does not subject alien friends' property to confiscation here.

The powers granted to the President under Section 5 of the Trading With the Enemy Act are far beyond freezing or even custodianship. The language of the enactment is:

> "During the time of war or during any other period of national emergency declared by the President, * * * any property or interest of a foreign country or national thereof shall vest, when, as, and upon the terms directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of this purpose."

These broad powers clearly bring the seizure of alien non-enemy property within the exercise of the power of eminent domain by our government as limited by the Fifth Amendment of the Constitution of the United States. The obligation imposed upon the government by that amendment is to make "just compensation."

Is this language broad enough to allow the government to determine amounts due from the alien owners of property seized under Section 5 as amended in *ex parte* hearings, pay the same out of the seized property, and tender the evidence of such payment as a part of the "just compensation" itself? Where claims have been allowed and paid which it develops afterwards were barred by some foreign law or statute, where claims themselves are fraudulent or grossly exaggerated, or where payments have been made to the wrong person, the executives of our government may find themselves in many awkward positions.

An interesting sidelight on the situation which bears every indication that some such thoughts have occurred, at least to some of our Congressmen, is revealed on an examination of three bills that have been introduced in Congress since the amendment of Section 5 was adopted. The first was a bill (H. R. 4840) introduced on May 19th, 1944, entitled "A Bill to Amend First War Powers Act 1941." The second (H. R. 5031), with a similar title, was introduced on June 15th, 1944. Both these bills contain provisions allowing the filing of claims by American citizens against non-enemy property seized under the First War Powers Act. The machinery was set up for their allowance by the government officials and payment out of the seized property.

We are informed that neither of these bills was reported out of Committee and that they are to be considered as dead.

The third bill was introduced in the present Congress on July 10th, 1945. It is still before the Committee on

Judiciary in the House of Representatives awaiting action by that Committee before it goes before the House. There is no provision in this last bill for the allowance, determination or payment of claims of American citizens by the Alien Property Custodian. In place of that, the bill provides that where property is to be returned a notice of that fact shall be published in the Federal Register at least thirty days before the actual return. This notice is to specify the place where the property or interest or proceeds to be returned are located. The bill further provides that after the publication of such notice, the property or interest shall be subject to attachment at the suit of any citizen or resident of the United States or any corporation organized under the laws of the United States or any state, territory or possession thereof, or the District of Columbia. This new bill is drawn, clearly to avoid the difficulties which we have mentioned above. Its effect is to turn over to a court of competent jurisdiction the determination of the amount of the claim, and the payment is to be made in satisfaction of a judgment properly rendered by that Court.

It is respectfully submitted that the argument entirely overlooks the fact that assets seized as enemy property and assets of non-enemy aliens vested under the power of eminent domain, cannot be treated on the same basis when it comes to the allowance and payment of debt claims against former owners of such property especially where there is no showing that the provisions of Amendment 5 of the Constitution have been complied with.

(c)

It is argued by our adversaries that Sub-Section 9(a) should be held as no longer in force, so far as debt claims are concerned; that to hold otherwise, in view of the decisions of our courts in cases arising out of World War I, which granted priority in payment to diligent creditors,

"would result both in disorderly administration of vested property and inevitable inequities among creditors" (Government's brief, pp. 18-19).

A perusal of the footnote on page 19 of that brief would seem to imply that with Sub-Section (a) in the wastebasket, the Alien Property Custodian will have the authority to invest himself with all the powers of a bankruptcy court in the distribution of assets in his possession; that he can receive and classify claims against a given piece of property and hold the same in abeyance for an indeterminate length of time; that he may pay claims in full which he should conclude were entitled to preference, and distribute any balance among creditors of other classes on what he might conceive an equitable basis where the assets were not sufficient to pay everything in full. Incidentally, the fact that the debtor, outside of the seized property here may be amply solvent, is not taken into account.

It is sufficient answer to this argument to call the Court's attention to the authorities cited above, which hold that Congress alone is vested with the power of federal legislation. Unless authorized by an act of Congress such a procedure by an executive officer of the government would be a direct usurpation of the power to legislate and therefore void.

(d)

It is insisted that the office of Alien Property Custodian has been operated during the present war upon the theory that Congress has purposely postponed the enactment of a law governing procedure as to both enemy property and property taken over by the government under Section 5 of the Trading With the Enemy Act, as amended by the First War Powers Act 1941, until problems arising with respect to both kinds of seizures could be dealt with at the same time, and that such assumption, when acted on by the ad-

ministrative branch of our government, should control the decision of this Court.

So far as assets taken over as belonging to non-enemy aliens are concerned, we need only call attention to our argument under I(b) (*supra*).

Under the sound construction of 9(e) contained in the decision of the Circuit Court of Appeals in this case, supported as it is by the decisions of this Court, the fact that the Alien Property Custodian and his legal advisers have made and acted upon the mistake of assuming that the enactment of Sub-Section 9(e) had the effect of destroying remedies of American creditors of enemies whose properties have been taken over during World War II granted by Sub-Section 9(a), furnishes no ground for a refusal to enforce the provisions of 9(a) in a proper case.

## II

**The plaintiff's suit is based not upon a mere debt claim, but under the facts alleged in the amended complaint and admitted by the motion an equitable assignment whereby a property right in the funds in the possession of the New York Superintendent of Insurance was created and is vested in plaintiff below.**

### Facts

The following are the facts as alleged in the amended complaint (Tr., p. 2, *et seq.*).

On July 25th, 1941, the assets of the United States Branch of the Assicurazioni Generali di Trieste e Venezia, hereinafter referred to as the "Italian Company," were taken over by the New York Superintendent of Insurance for liquidation. These assets exceeded by something like $2,000,000 the total liabilities of the American Branch.

Thereafter and in due course Cabell & Cabell, a firm of New York lawyers who had represented the Italian Company and its United States Branch for a number of years, filed a claim with the New York Liquidator for services and disbursements in the sum of $21,848.89. The claim as filed was endorsed as follows:

> "The above claim for services and disbursements by Cabell & Cabell, has been submitted to the Home Office of Assicurazioni Generali and has been approved.
>
> (Signed) Assicurazioni Generali
> By Dr. Ignazio Hornik."

Dr. Ignazio Hornik was, from its inception in 1935, the Manager of the United States Branch of the Italian Company, and also held an office equivalent to that of Vice President on the Home Office General Staff of the Italian Company.

The New York Liquidator allowed and paid $14,848.89 of the claim as filed, and disallowed the balance of $7,000 upon the ground that the items of the account covering services and disbursements to this amount had been rendered or advanced by Cabell & Cabell to the Home Office of the Company, and for that reason could not be paid by him as Liquidator of the New York Branch. He was sustained by the New York Courts.

On December 11, 1941, war was declared between the United States and Italy.

On October 7, 1942, by vesting order 218, Leo T. Crowley, the then Alien Property Custodian of the United States, vested in himself as such Alien Property Custodian, all funds and properties in this country belonging to the Italian Company, including what might remain of the assets of the United States Branch after payment by the Liquidator of the claims against such branch, plus the liquidating expenses.

Thereafter, a notice of the claim of Cabell & Cabell was duly filed with the Alien Property Custodian, as required by law.

The prayer for relief in the amended complaint is that the defendants be directed "to pay to the plaintiff out of the assets of the former United States Branch of the Assicurazioni Generali di Trieste e Venezia, in their possession or under their control the sum of $6,922.02, with interest thereon at 6% from July 25th, 1941."

The slight difference in these figures from those in the claim as filed with the Liquidator, was due to an adjustment of estimated disbursements to actual disbursements.

Our contention is that the above facts constitute an equitable assignment of so much of the residue of funds of the United States Branch as were necessary to pay the amount admittedly due, plus 6% interest thereon; that said assignment, since it became effective prior to the declaration of war between the United States and Italy and prior to the vesting order of the funds of the Italian Company in this country issued by the Alien Property Custodian, was not affected either by the state of war or the vesting order.

An equitable assignment has been defined in 5 Corpus Juris 837 as "such an assignment as gives the assignee a title which, although not cognizable at law, equity will recognize and protect. It is in the nature of a declaration of trust and is based on principles of natural justice and essential fairness without regard to form."

In *Curtis* v. *Walpole Tire & Rubber Co.*, 218 Fed. 145, the facts were as follows: Curtis had advanced to the Walpole Tire & Rubber Co. certain moneys to meet their obligations, and in acknowledgment of the debt, was given a note. In addition to the note an order was sent to the Foster Rubber Co., a corporation which owed a consider-

able sum of money to the Walpole Company directing the former company to pay Curtis out of the money then or thereafter due to the Walpole Company. Thereafter the Walpole Tire Company went into the hands of a receiver, and the case came before the United States Circuit Court of Appeals for the First Circuit, upon the question as to whether Curtis had an enforceable interest in moneys which had been collected by the Receiver from the Foster Rubber Company on accounts due by that Company to the Walpole Tire & Rubber Co.

The lower Court refused to allow a preference and classified the claimant as a general creditor. The Circuit Court of Appeals reversed that decision, holding that the transaction in effect amounted to an equitable assignment, and ordered the claim to be paid out of the funds paid to the Receiver by the Foster Rubber Company. The Court said, at page 148:

> "The Tire Company retained no right to collect the amount for its own benefit, or to revoke the disposition promised as to the future. The assignment and equitable interest in the amount as it then stood, and as it might thereafter accrue, passed to the claimant a security for his note, together with the power to collect the account and apply the proceeds in satisfaction of the note. As the assignment vested in the claimant an equitable interest in the account, with the power to collect the same, he thereby became possessed of a power, coupled with an interest in the account as assigned, which was irrevocable."

A most instructive case on this subject is *In re Dier*, 296 Fed. 816, decided by the Circuit Court of Appeals for the Third Circuit. In that case the Court carefully pointed out and defined the elements necessarily present to constitute an equitable assignment, and held that the elements presented by the facts of that case established such assignment. The Court held that in order to establish an equitable assignment:

"The intention of the assignor must be to transfer a present interest in the debt or fund or subject matter.

"What amounts to a present appropriation which constitutes an equitable assignment, is a question of intention to be gathered from all the language construed in the light of attendant circumstances.

"Any words or transactions which show an intention on the one side to assign, and an intention on the other to receive, if there is a valuable consideration, will operate as an effective equitable assignment.

"To constitute an assignment good even in equity there must be an actual or constructive appropriation of the subject matter, a perfected transaction between the parties, intended to vest in the assignee a present right; even where the circumstances do not admit of its immediate exercise."

An examination of the citations in the first *Corpus Juris* and in *Corpus Juris Secundum* under the text of those works defining equitable assignments, shows that as so defined our Federal and State Courts have with practical unanimity enforced such assignments. (5 *Corpus Juris*, p. 837, *et seq.*, 6 *Corpus Juris Sec.*, p. 1101, *et seq.*)

It is submitted that every element necessary to constitute an equitable assignment as defined and enforced by our courts under the decisions, is present in the instant case.

In the *Matter of People (Russian Reinsurance Company)*, 255 N. Y. 415, 424, where, by reason of world conditions similar to those in this case, the United States' assets of certain Russian Insurance Companies had been taken over for liquidation by the New York Superintendent of Insurance, the New York Court of Appeals said:

"There is no receiver at the domicile and the corporations are still solvent, willing, as well as able,

to pay their creditors in full. In such circumstances, the duty of the Superintendent is to pay the surplus to the legal owners, deducting a sum sufficient to pay his own expenses as well as intervening liens."

In this case we have an account for services and expenses rendered and to be rendered, the amount of which is agreed upon by both parties. This is followed by an endorsement on the account itself as presented to the Liquidator, signed by the company, affirming the correctness of the amount named in the account and approving its payment out of the assets belonging to them in his hands as liquidator of its American branch. These assets far exceeded the obligations of the company which under the laws of New York took precedence over foreign claims.

All this was done before war had been declared between the United States and Italy and more than a year before the vesting order seizing the company as enemy property was issued by the Alien Property Custodian.

The endorsement by the accredited officer of the insurance company of the approval by the home office of the claim for legal fees and disbursements filed by Cabell & Cabell with the New York Liquidator was in effect and to all intents and purposes a directive by the insurance company to the Liquidator to pay the claim. Had such a directive been filed with a private institution holding these funds, any disregard of the request would have been upon the institution's responsibility. This endorsement of approval by the insurance company can, therefore, be treated as being in the nature of an order to pay.

The effect of an equitable assignment under the decisions is to vest in the assignee an interest in the designated fund, where payment is not immediately available, equal to the amount agreed upon by the parties, with interest until paid.

As the acquirement of this property right in the American assets of the Assicurazioni Generali in the hands of

the Superintendent of Insurance, as liquidator, antedated by more than a year the seizure of the property by the Alien Property Custodian and as only a part of the amount admitted to be due and which was intended to be covered by the equitable assignment, has been paid by the Liquidator, it logically follows that to the extent of the unpaid balance this property right, owned by Americans, survives the seizure and is now enforceable.

Under the provisions of original Section 9, now Sub-Section 9(a) of the Trading With the Enemy Act, any person "not an enemy or ally of enemy, claiming any *interest, right* or *title* in any money or other property which may have been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or seized by him hereunder" has the right after filing a notice of his claim to bring suit on the same if not paid, in a court of equity. (Emphasis supplied.)

It will be difficult by any stretch of the imagination to nullify this provision by an interpretation of the language of Section 9(e).

In a petition for a writ of certiorari entitled *Ehrich* v. *Eisenlohr,* it was sought to have this Court reverse the decision that had been rendered by the Circuit Court of Appeals of the Third Circuit, *In re Dier.* The writ was refused (*Ehrich* v. *Eisenlohr,* 265 U. S. 584).

In its opinion rendered *In re Dier,* the Circuit Court of Appeals carefully examined into the Pennsylvania State Court decisions upon the ground that the transactions claimed to constitute an equitable assignment had all taken place in that state.

In the instant case everything that we rely on took place in the State of New York, and an examination of the New York cases on the subject show that our State courts are entirely in line with the conception of an equitable assignment as defined in the *Dier* case.

In *Brill* v. *Tuttle*, 81 N. Y. 454, it was held that where an order addressed to a debtor directed that the money to be paid be charged to a certain account then existing in favor of the creditor under circumstances that showed that payments were to be made out of moneys due or to become due on the account, and that all the parties must have so understood it, such order constituted an equitable assignment of the fund. In that case the debtor had refused to act upon the order and voluntarily paid the amount he owed to the drawers of the order. The Court held that he did so "in his own wrong," and compelled him to account to the equitable assignee.

In *Lauer* v. *Dunn*, 115 N. Y. 405, under a contract between the defendant Dunn, as the owner of certain property, and one Hurley, for the construction of several buildings, the plaintiffs as subcontractors had furnished labor and materials. In part payment they had received from the contractor Hurley, a request addressed to Mr. Dunn in writing to pay to the subcontractor $700, and charge the same to the account. Dunn refused to accept this order and was sued by the subcontractor. The Court, on page 409, said:

> "After notice of this order, which was, as we have said, in effect an assignment of the contractor's interest in the moneys in the owner's hands, the owner was bound to apply the fund to its payment and to no other purpose. Such was the rule asserted in *Brill* v. *Tuttle*, 81 N. Y. 454, and which is well settled by authorities."

To the same effect are the decisions in *Bates* v. *Salt Springs National Bank*, 157 N. Y. 322; *Weniger* v. *Fourteenth Street Store*, 191 N. Y. 423; *Muller* v. *Kling*, 209 N. Y. 239.

## CONCLUSION

**We submit that the decision of the Circuit Court of Appeals should be affirmed by this Court.**

HARTWELL CABELL,
*Respondent Pro se.*

CHARLTON OGBURN,
*Counsel for Respondent.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1945

No. 76

JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN and W. ALEXANDER JULIAN, Treasurer of the United States,

*Petitioners,*

*against*

HARTWELL CABELL,

*Respondent.*

## MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE*

GEO. WHITEFIELD BETTS, JR.,
GEORGE YAMAOKA,
*Amici Curiae.*

October 1945.

# INDEX


| | PAGE |
|---|---|
| MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE | 1 |
| BRIEF OF AMICI CURIAE | 3 |
| PRELIMINARY STATEMENT | 3 |
| QUESTION INVOLVED | 4 |
| ARGUMENT | 4 |
| I. Section 9(e) of the Trading With the Enemy Act, as amended, does not preclude a suit upon a debt claim accruing after October 6, 1917, and not arising out of World War I | 4 |
| II. Construction of Section 9(e) to permit suit of unsecured debts arising after October 6, 1917, would not interfere with orderly administration of alien property | 10 |
| CONCLUSION | 13 |


## TABLE OF CASES CITED


| | |
|---|---|
| Arizona v. California, 283 U. S. 423 | 5 |
| Becker Co. v. Cummings, 296 U. S. 74 | 5, 10 |
| Chastleton Corp. v. Sinclair, 264 U. S. 543 | 9 |
| Draeger Shipping Co. v. Crowley, 49 Fed. Supp. 215 | 4, 5 |
| Fleischmann v. United States, 270 U. S. 349 | 10 |
| Holy Trinity Church v. United States, 143 U. S. 457 | 10 |
| Ozawa v. United States, 260 U. S. 178 | 10 |
| Russian Volunteer Fleet v. United States, 282 U. S. 481 | 11 |

PAGE

Stoehr v. Wallace, 255 U. S. 239 ..... 5

United States v. Jackson, 302 U. S. 628 ..... 9

United States v. Securities Corporation General, 4 Fed. 2d 619 (1925) affirmed sub. nom. White v. Mechanics Securities Corp., 269 U. S. 283 ..... 13

STATUTES CITED

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First War Powers Act of 1941 ..... 5, 8, 10

Settlement of the War Claims Act of 1928 ..... 5, 7

Trading With the Enemy Act of 1917 as amended:

Section 5(b) ..... 5, 9, 10, 11
Section 7(c) ..... 5
Section 9(a) ..... 4, 5, 6, 9, 10, 11, 12
Section 9(e) ..... 4, 5, 6, 7, 8, 9, 10, 11

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Executive Order No. 8389 ..... 11

Hearings before Committee on Interstate and Foreign Commerce, May 25, 1920 ..... 6, 7

Hearings on H. R. 4840, 78th Congress, Second Session (1944), pp. 14-15, 104-106 ..... 8, 11

H. R. 14208, 66th Congress ..... 5

H. R. 7201, 70th Congress, First Session ..... 7

Report No. 17, 70th Congress, First Session ..... 7, 8

Senate Document No. 182, 69th Congress, Second Session, 1926 ..... 12, 13

# Supreme Court of the United States

OCTOBER TERM, 1945

No. 76

JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN and W. ALEXANDER JULIAN, Treasurer of the United States,
*Petitioners,*

*against*

HARTWELL CABELL,
*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

## MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

May it please the Court:

The undersigned, Geo. Whitefield Betts, Jr., and George Yamaoka, *pro se,* respectfully move this Honorable Court for leave to file the accompanying brief as *amici curiae.* Counsel for the petitioners and for the respondent herein have consented to the filing of this brief.

GEO. WHITEFIELD BETTS, JR.,
GEORGE YAMAOKA,
*Pro Se.*

# Supreme Court of the United States

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No. 76

JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN and W. ALEXANDER JULIAN, Treasurer of the United States,
*Petitioners,*

*against*

HARTWELL CABELL,
*Respondent.*

## BRIEF OF *AMICI CURIAE*

### Preliminary Statement

This brief is submitted by Geo. Whitefield Betts, Jr., and George Yamaoka as *amici curiae pro se.* They are members of the firm of Hunt, Hill & Betts of New York, N. Y. Said firm was counsel for plaintiff in the case of *Sekiji Yasui* v. *Leo T. Crowley,* Civil Actions Nos. 21-451, 21-452 and 21-453 in the United States District Court for the Southern District of New York (cited in footnotes in Petition for Certiorari herein, p. 15, and in Petitioners' Brief, p. 21). Said actions involved, among other issues, the identical one here presented but were voluntarily dismissed in January, 1944 because of proposed new legisla-

tion to be introduced in Congress which would have made such questions moot. However, as the proposed legislation has not yet been enacted, these causes of action are still extant.

In addition, said firm of Hunt, Hill & Betts has claims now pending with the Alien Property Custodian for legal services and disbursements rendered to enemy debtors whose assets have been vested by the Alien Property Custodian and therefore occupies the same position as the respondent in this case. All of such claims involve questions of law similar to those here presented.

## Question Involved

Whether a non-enemy creditor of a former owner of property vested by the Alien Property Custodian during World War II may bring suit against the Custodian on a debt claim arising after October 6, 1917, under Section 9(a) of the Trading With the Enemy Act of 1917 as amended, notwithstanding the limitations of Section 9(e) of said Act.

## ARGUMENT

### I

### Section 9(e) of the Trading With the Enemy Act, as amended, does not preclude a suit upon a debt claim accruing after October 6, 1917, and not arising out of World War I.

Section 9(a) of the Trading With the Enemy Act as amended is prospective and of general application and the remedies provided therein should be and have been available to claimants who qualify during World War II. *Draeger Shipping Co.* v. *Crowley*, 49 Fed. Supp. 215.

Section 7(c) of the Act limiting claimants to the remedies specified in the Act has been consistently construed to refer to those secured to claimants in Section 9. *Becker Co.* v. *Cummings*, 296 U. S. 74.

As Section 5(b) of the Act, as amended by the First War Powers Act, 1941, does not specify any remedy in favor of claimants *vis-a-vis* the action taken thereunder by the Alien Property Custodian, unless Section 5(b) is correlated to the remedies of Section 9(a) as to non-enemy claimants a grave question of unconstitutionality would arise under the Fifth Amendment. It must therefore be presumed that the Congress acted within the framework of traditional constitutional guarantees. *Becker Co.* v. *Cummings, supra; Stoehr* v. *Wallace*, 255 U. S. 239; *Draeger* v. *Crowley, supra.*

Since the issues here presented arise on a motion by petitioners to dismiss the amended complaint, the allegations thereof must be deemed admitted. *Arizona* v. *California*, 283 U. S. 423. The amended complaint substantially alleges a cause of action on a debt claim as authorized in Section 9(a) of the Act.

Petitioners notwithstanding contend that Section 9(e) of the Act bars the present suit since admittedly this debt claim arose subsequent to October 6, 1917, and respondent did not file a claim therefor with the Custodian prior to the enactment of the Settlement of the War Claims Act of 1928. The issue in the present case, therefore, is of very narrow compass and depends upon the proper construction and application of Section 9(e).

This subdivision (e) first appeared as an amendment to the original Act by the Act of June 5, 1920 (41 Stat. 977) which for the first time limited debt claims recognizable under the Act to those "owing to and owned by the claimant prior to October 6, 1917." This amendment was part of H. R. 14208 introduced in the 66th Congress. At the

hearings before the Committee on Interstate and Foreign Commerce which considered this bill on May 25, 1920, Lucien H. Boggs, Esq., Special Assistant to the Attorney General, who was in charge of claims under Section 9 of the Act, appeared and made the following statement (see pp. 19 *et seq.* of Report of said hearings):

> "Mr. Boggs: There is one provision which I see no discussion has been had so far, and that is subsection (e). That subsection is on page 9 and it is concerned entirely with the question of allowance of debts. The debts are allowed under section 9 of the act, and I may—that subdivision (e) is largely declaratory of the interpretation put upon the act as it now exists, by the department. That subdivision says:
>
> > No money or other property shall be returned nor any debts allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States.
>
> That is a slight change from the text of the act as it was originally passed because there the wording is 'That any person, not an enemy, or ally of enemy' will file the claim for debt. But Mr. Hill will be able to advise you more definitely as to the basis for the suggestion, because it seems that Americans are also concerned as creditors with regard to enemy property under liquidation in Great Britain and France, and it seems desirable to the State Department that we should not allow the privilege of collecting debts here out of enemy property by citizens of France and Great Britain unless a similar privilege is allowed to American citizens with reference to property there liquidated.
>
> The next clause reads, 'nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917.' *That, in view of the department, does not give the act a new meaning. It is simply declaratory.*

The Chairman: In reference to the date mentioned, October 6, 1917, that was the date of the approval of the Trading With the Enemy Act?

Mr. Boggs: *Yes, sir. In other words, it has been consistently the view of the department that the privilege of collecting a debt out of enemy property was not a privilege which was intended to frustrate practically the entire purpose of the conservation of this property, as declared in section 12. Today, there is trade between the United States and Germany, and as such trade is lawful there would be no obstacle in the way of a merchant in New York sending a bill of goods valued, say, at $500,000 to a merchant in Leipsic and coming to the Alien Property Custodian and saying, 'Please pay this bill.' The effect would be merely to pay the enemy back his property in goods and leave the Government with an empty bag in its hands. We do not believe the Congress intended there should be such a result; and, therefore, we have ruled that the act did not contemplate the payment of any debts which arose subsequent to the passage of the act. This section is merely declaratory of the interpretation that the department put upon it.*" (Italics ours.)

The foregoing statement clearly reveals the *raison d'etre* of the October 6, 1917, date limitation and that the Congress intended by this subdivision (e) only to limit claims arising out of World War I and not any other or future claims in future wars.

The other requirement that no debt shall be allowed under this subdivision (e) unless the notice of claim is filed prior to the enactment of the Settlement of War Claims Act of 1928 (March 10, 1928) was for the purpose of cutting off the filing of further claims since adequate opportunity had been provided. Report No. 17, 70th Congress, First Session, which accompanied H. R. 7201 (later enacted as the "Settlement of War Claims Act of 1928"), page 20, states:

> "Under the existing law a creditor of a person whose property was seized by the Alien Property Custodian may file a claim and institute proceedings for the payment of the debt, under certain conditions. Inasmuch as these claimants have had more than nine years in which to file their claims, this provision is amended by subsection (b) of section 10 of the proposed bill so as to permit payment only where the claim was filed prior to the date of the enactment of the bill."

This act specifically dealt with the question of settlement of World War I problems and no others. The above addition to subdivision (e) therefore should not be distended beyond the legislative purpose.

That the Congress did not see fit to amend this subdivision (e) subsequent to December 8, 1941, when it could have done so at the time it was considering the First War Powers Act of 1941 but chose to retain it in its present form is not a case of mere oversight or inadvertence.

At the hearing held June 9, 1944, before Subcommittee No. 1 of the Committee on the Judiciary of the House of Representatives, 78th Congress, Second Session, on H. R. 4840 (subsequently amended and reintroduced as H. R. 5031) to amend the First War Powers Act, 1941, John Ward Cutler, Esq., Assistant General Counsel of the office of Alien Property Custodian, stated (pp. 14, 15):

> "Mr. Celler (interposing): Just a moment. This bill comprising sections 32 and following are new sections to be added to the Trading With the Enemy Act? Is that correct?
>
> Mr. Cutler: That is correct.
>
> Mr. Celler: Go ahead.
>
> Mr. Cutler: I might say at this point that that procedure is suggested because there is a residue of World War I property, and if you start amending the original sections you throw into confusion the completion of the administration of that early property.

It seems therefore much more appropriate to leave that intact and add necessary sections to deal with the present situation.

You then have a complete framework within which both sets of property can be operated.

Mr. Celler: Well, wouldn't these new sections still apply to the property that came out of the First World War that is still in process?

Mr. Cutler: Well, that has reached such a point that most of these sections would be inappropriate to it.

Mr. Robsion: What is the amount of property from World War I?

Mr. Cutler: The grand total is $64,902,502.75."

Because of the above residue of World War I property still remaining in the hands of the Federal Government, which fact must be presumed to have been within Congressional knowledge, the retention of Section 9(e) in its present form was and is not only imperative but logical.

To enlarge, therefore, as petitioners contend, the limitations of Section 9(e) as a bar to debt claims arising in the present conflict is to ignore its legislative history and congressional purpose in its enactment and retention. Moreover, to do so would do violence to the rule established in *Chastleton Corp. v. Sinclair*, 264 U. S. 543, which is peculiarly pertinent to the issue here presented. In that case this Court in interpreting the continued applicability of emergency legislation in World War I held that a law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change.

On the other hand, leaving aside Section 9(e), should petitioners propose that, since the vesting by the Alien Property Custodian was undertaken pursuant to the new directives in Section 5(b) of the Act, which is silent as to remedies, respondents in any event cannot prevail, they are confronted by the rule against implied repealer of Section 9(a). *United States* v. *Jackson*, 302 U. S. 628.

The decision of the Circuit Court of Appeals in relegating Section 9(e) to its proper niche in the overall scheme of treatment of enemy property as intended by the Congress finds ample support in the rule of statutory construction enunciated in *Holy Trinity Church* v. *United States*, 143 U. S. 457; *Ozawa* v. *United States*, 260 U. S. 178, and *Fleischmann* v. *United States*, 270 U. S. 349.

The proposed literal extension of Section 9(e) beyond its true scope would only result in the further undue postponement of just claims of American citizens and non-enemy claimants.

It is therefore submitted that the provisions of Section 9(a) should be broadly construed to give effect to its remedial purpose as declared in *Becker Co.* v. *Cummings*, *supra*, and the new grant of the powers to the Alien Property Custodian in Section 5(b) as amended should be synchronized with the remedies provided in Section 9(a) unfettered by the strictures of Section 9(e).

## II

**Construction of Section 9(e) to permit suit of unsecured debts arising after October 6, 1917, would not interfere with orderly administration of alien property.**

Petitioners contend that the affirmance by this Court of the decision below would interfere with efficient administration of alien property in World War II, result in inequities among creditors, cause the Alien Property Custodian to be confronted with multiplicity of creditors' suits and encumber or prevent the use of vested property in the national interest.

While admittedly Section 5(b) of the Act as amended by the First War Powers Act, 1941, enlarges the scope of

Federal control over alien property because of the expansion of authority to any property or interest of "any foreign country or national thereof" as distinct from the authorization in the original act to deal only with assets of "enemy or ally of enemy," nevertheless, a proper correlation of these additional powers in Section 5(b) with the remedies of Section 9(a), unencumbered by Section 9(e), would but inevitably narrow rather than enlarge the areas of dispute. Extension of authorized Federal control by Section 5(b) necessarily restricts the grounds of claiming unauthorized exercise of Federal power under Section 9(a), thereby minimizing litigation. This should aid rather than hamper efficient administration.

The argument that creditors of enemy foreign nationals should be treated on a parity with creditors of non-enemy foreign nationals overlooks certain fundamental concepts. Non-enemy alien assets cannot be subjected to eminent domain except in conformity with constitutional guaranties, treaties and international obligations. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481. Enemy assets, on the other hand, may even be confiscated by the Federal Government within its sovereign power, if it so desires, without regard to such safeguards and without accountability to the former owners. But in appropriating enemy assets during war for national uses, the Congress in Section 9(a) expressly provided for remedies to non-enemies in case of erroneous seizure and for the satisfaction of non-enemy creditors' claims. This declaration of policy by the legislature, therefore, is not only sound but must be followed.

Furthermore, supervision and control by the Treasury Department under Executive Order No. 8389 as amended of alien assets approximating about $8,000,000,000 (see Hearings on H. R. 4840, 78th Congress, Second Session (1944), pp. 104-106) is purely by administrative action. Creditors of such non-enemy foreign nationals may only obtain relief upon procuring a proper license from the

Treasury Department which it may grant or refuse at its discretion irrespective of the merits. This administrative action is practically beyond review by the courts.

The argument that creditors of enemies whose assets have been vested by the Alien Property Custodian should likewise be relegated to the same position ignores not only the distinctions above noted but the express provisions of Section 9(a). Moreover, it seeks further to delay and avoid unnecessarily long over due recognition of just claims of American citizens and friendly foreign nationals against enemy debtors which should not be permitted.

Of utmost importance is the fact that the Trading With the Enemy Act of 1917 and its subsequent amendments were enacted by the Congress after careful and due consideration. They constitute a comprehensive declaration of policy by this Government in the treatment of enemy property in conformity with our concept of moral and international obligations. The various provisions have been tested in numerous suits, some of the principal decisions having been rendered by this Court.

The original act, including the remedies of Section 9 was enacted October 6, 1917, approximately six months after the entry of the United States into World War I. Today, in World War II after the lapse of over three and a half years claimants are still endeavoring to determine whether their claims are justiciable. The Federal Government in World War I as well as the legislature did not consider the right of domestic creditors to seek satisfaction from enemy assets by recourse, if desired, to the courts an undue burden. Nor did they consider the recognition of such rights a detrimental encumbrance upon the use of vested property in the national interest. Besides, since the Alien Property Custodian in World War I had under his jurisdiction over $550,000,000 of enemy assets (see Senate Document No. 182, 69th Congress, Second Session,

1926, entitled "Administration of the Office of the Alien Property Custodian," Part I, p. 10), whereas in World War II the present Custodian has only approximately $212,400,000 (see Annual Report of Office of Alien Property Custodian, 1944, pp. 14, 16) of enemy assets under his control, the potency of petitioners' arguments becomes considerably diluted.

As for the further argument that the present Act does not provide for equitable, ordered priority in the payment of debt claims, and does not take into consideration claims of American owners of property abroad and the general problem of reparations, it is submitted that these identical arguments were unsuccessfully presented by the Custodian in *United States* v. *Securities Corporation General*, 4 Fed. 2d 619 (1925), affirmed *sub nom. White* v. *Mechanics Securities Corp.*, 269 U. S. 283. The legislature, in spite of ample opportunity, has not seen fit since then to modify the act so as to conform to the arguments then and now again presented. Had grave injustices or the purported administrative difficulties arisen, the Congress and the courts would never have remained so long silent.

## CONCLUSION

**The decision of the Circuit Court of Appeals should be affirmed.**

Respectfully submitted,

GEO. WHITEFIELD BETTS, JR.,
GEORGE YAMAOKA,
*Amici Curiae.*

October 1945.

P. 7 concurring

# SUPREME COURT OF THE UNITED STATES.

No. 76.—October Term, 1945.

| | |
|---|---|
| James E. Markham, Alien Property Custodian, and W. Alexander Julian, Treasurer of the United States, Petitioners, *vs.* Hartwell Cabell. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit. |

[December 10, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

Respondent, an American citizen, brought this suit against the Alien Property Custodian and the Treasurer of the United States to recover from the assets of the Assicurazioni Generali di Trieste e Venezia, an Italian insurance company, the unpaid portion of a claim for legal services rendered that company. The assets of the company had vested in the Alien Property Custodian in 1942[1] and the vested assets had been delivered to him. The suit was sought to be maintained under § 9(a) of the Trading with the Enemy Act (40 Stat. 411, as amended 41 Stat. 977, 50 U. S. C. App. § 9(a)), which allows "Any person not an enemy or ally of enemy . . . to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian" to sue the Custodian or the Treasurer of the United States in the federal courts. Petitioners moved to dismiss on the ground that the claim did not qualify under § 9(e) of the Act. Sec. 9(e) which was added to the Act in 1920 (41 Stat. 980) and amended in 1928 (45 Stat. 271) provides that no debt shall be allowed under § 9 "unless it was owing to and owned by the claimant prior to October 6, 1917" nor "unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the Settlement of

[1] See Vesting Order 218, dated October 7, 1942, 7 Fed. Reg. 9466; Vesting Order 468, dated December 9, 1942, 8 Fed. Reg. 1038. For the establishment of the office of Alien Property Custodian and the definition of his functions as respects the vesting of alien property, see Executive Order 9193, dated July 6, 1942, 7 Fed. Reg. 5205, amending Executive Order 9095, dated March 11, 1942, 7 Fed. Reg. 1971.

War Claims Act of 1928." In view of those provisions of § 9(e) the District Court dismissed the complaint. The Circuit Court of Appeals reversed. 148 F. 2d 737. The case is here on a petition for a writ of certiorari which we granted because of the public importance of the question presented.

If § 9(e) is applicable here, the suit may not be maintained since the debt was not in existence on October 6, 1917, nor had notice of the claim been filed or application therefor been made prior to the date of the enactment of the Settlement of War Claims Act of 1928. We would have quite a different case if § 9(a) and (e) had been enacted after the outbreak of the recent war. For we may assume that Congress could set up such barriers as it chose to the enforcement of the claims of an alien's creditors against the seized property. But the doubt as to the applicability of § 9(e) to the present situation arises because that provision was part of the legislation enacted after the outbreak of World War I to deal with the claims against property seized during that period. That legislation was not reenacted when the recent war broke out. It automatically went into effect again at that time.[2] Hence the argument that these provisions of § 9(e) are limited to claims against property seized during World War I. Our conclusion is that they are so limited.

In the first place, § 9(e) disallows recovery "to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States." When it is recalled that § 9(e) was first added to the act in 1920, it seems tolerably clear that the words "was associated with the United States in the prosecution of the war" refer to World War I. The use not only of the past tense but also of the concept of "associate" is significant. As Judge Learned Hand speaking for the Court below said, the word "associate" was used during World War I "in sedulous avoidance

[2] As the Circuit Court of Appeals pointed out, that followed from several circumstances: (a) § 2(e) defined "the beginning of the war" to mean "midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war"; (b) § 302 of the First War Powers Act, approved December 18, 1941 (55 Stat. 838, 840) assumed that the Trading with the Enemy Act had not been in force before December 8, 1941, and that it went into effect again at that time; and (c) § 5(b) of the Trading with the Enemy Act was amended December 18, 1941, by the First War Powers Act without any mention of the other parts of the earlier act. 55 Stat. 839.

of any implication" that we had "allies". In the second place, the time limitations contained in § 9(e) point the same way. As the United States says, some sections of the Act were explicitly restricted to situations growing out of World War I, as, for example, § 3(d). But it seems to us that the provisions of § 9(e) with which we are now concerned carry almost as plain a hallmark. For the restriction of suits to debts which were owing to and owned by the claimant prior to October 6, 1917 and as respects which a notice of claim had been filed prior to the date of the enactment of the Settlement of War Claims Act of 1928 strongly suggests that Congress was dealing exclusively with World War I claims, not with claims which might arise in some future war. As of 1920 and 1928 the time limitations written into § 9(e) had no other relevancy. The Committee Reports[3], accompanying the legislation by which § 9(e) was added to the law, while not explicit on the precise point, show that Congress was concerned solely with the handling of claims which then existed. There is not the slightest suggestion that Congress was drafting a statute of limitations likewise applicable to claims which might be asserted in case the United States at some future time again went to war. These considerations indicate to us that it would be a distortion to read § 9(e) as if Congress in December 1941 decided that the statute of limitations applicable to World War I claims should likewise be applicable to World War II claims. If we gave § 9(e) that broad interpretation, we would, in the third place, deprive § 9(a) of all meaning so far as World War II claims were concerned. That we hesitate to do, for the Act was not only designed to operate in the first World War; it was also to become effective at the time of any future war unless repealed or superseded. Yet the remedy afforded by § 9(a) would be quite illusory and ineffective so far as it applies to World War II claims if § 9(e) were read literally without regard to its history. It was for this reason particularly that the court

[3] See H. Rep. No. 1089, 66th Cong., 2d Sess.; S. Rep. No. 273, 70th Cong., 1st Sess., p. 29; H. Rep. No. 17, 70th Cong., 1st Sess., p. 20. In S. Rep. No. 273, *supra*, it was stated: "Under the existing law a creditor of a person whose property was seized by the Alien Property Custodian may file a claim and institute proceedings for the payment of the debt, under certain conditions. Inasmuch as these claimants have had more than 10 years in which to file their claims, this provision is amended by subsection (b) of section 12 of the proposed bill so as to permit payment only where the claim was filed prior to the date of the enactment of the bill."

below refused "to make a fortress out of the dictionary" and to read § 9(e) strictly and literally. The policy as well as the letter of the law is a guide to decision. Resort to the policy of a law may be had to ameliorate its seeming harshness or to qualify its apparent absolutes as *Holy Trinity Church* v. *United States*, 143 U. S. 457 illustrates. The process of interpretation also misses its high function if a strict reading of a law results in the emasculation or deletion of a provision which a less literal reading would preserve.

The United States, however, contends that such a construction of § 9(e) would gravely interfere with the efficient administration of alien property controls in accordance with policies adopted by Congress in relation to World War II. It points out that by virtue of amendments to § 5(b) of the Trading with the Enemy Act which were made on December 18, 1941 by the First War Powers Act (55 Stat. 839, 50 U. S. C. App., Supp. IV, § 616), the Executive is now armed with far more comprehensive power over alien property and the property of other foreign interests than in World War I. Now there is the "freezing" or "blocking" of foreign funds aimed at the immobilization of foreign assets in the United States by prohibiting, without a license, any transactions involving them—a program initiated after the invasion by Germany of Denmark and Norway and administered by the Treasury.[4] If the Treasury refuses a license permitting payment of creditors out of blocked funds, neither the creditor nor the owner has any remedy as a matter of right under the Act. It is said that to allow creditors of certain aliens whose property has been vested in the Alien Property Custodian to maintain suits but to disallow suits by creditors of aliens whose funds are merely frozen is to destroy consistency in the position of creditors under the Trading with the Enemy Act. Moreover, § 9(a) permits suits on debt claims only if the debt is one "owing from an enemy or ally of enemy" whose property has been taken. By the 1941 amendment to § 5(b) the vesting power has not been so limited but extends to "any property or interest of any foreign country or national." The argument is that to construe § 9(e) so as to permit creditors of an enemy to sue is to discriminate without warrant against creditors of non-enemy foreign nationals

[4] This program, initiated by Executive Order 8389, dated April 10, 1940, 5 Fed. Reg. 1400, was ratified by Congress on May 7, 1940, by Joint Resolution. 54 Stat. 179.

who are given no such remedy. Moreover, it is said that if § 9(e) is not a barrier to suits, a race of diligence would be started with no guarantee of any equitably ordered priority in the payment of the claims out of the seized property. It is also argued that if these suits are allowed the operations of the Custodian would be burdened with litigation.

We have concluded that however meritorious these considerations are, they raise questions of policy for Congress. We are concerned only with the right to sue on a debt under § 9. Congress granted that right to some claimants and withheld it from others. Whether its choice was wise or not is not for us to say. The right to sue, explicitly granted by § 9(a), should not be read out of the law unless it is clear that Congress by what it later did withdrew its earlier permission. We can find no indication in the 1941 legislation that Congress by amending § 5(b) desired to delete or wholly nullify § 9(a). On the contrary, the normal assumption is that where Congress amends only one section of a law, leaving another untouched, the two were designed to function as parts of an integrated whole. We should give each as full a play as possible. Moreover, we are able to find in the amendment to § 5(b) no suggestion or indication that Congress was writing a different statute of limitations than was then contained in § 9(e). The 1941 amendment is as silent on that score as it is on the right to sue afforded by § 9(a).

It is true that § 5(b) gave a broader grant of authority to the Executive than had existed under the original Act.[5] As respects the seizure of property it provides:

[5] As stated in H. Rep. No. 1507, 77th Cong., 1st Sess., pp. 2-3:

"Section 5(b) of the Trading With the Enemy Act has been continued down to the present time. The existing system of foreign property control (commonly known as freezing control) is based on that subdivision as last amended on May 7, 1940. That subdivision of section 5 as it is now in effect, however, does not give the broad powers to take, administer, control, use, liquidate, etc., such foreign-owned property that would be given by section 301 of the bill.

"At present the Government exercises supervision over transactions in foreign property, either by prohibiting such transactions or by permitting them on condition and under license. It is, therefore, a system which can prevent transactions in foreign property prejudicial to the best interests of the United States, but it is not a system which can affirmatively compel the use and application of foreign property in those interests.

"Section 301 remedies that situation by adding to the existing freezing control, in substance, the powers contained in the Trading With the Enemy Act with respect to alien property, extending those powers, and adding a flexibility of control which experience under the original act and the recent

"any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe *such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States*, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes". (Italics added)

It is said that the survival of the privilege of satisfying debt claims as a matter of right out of vested property is inconsistent with the new power granted the Executive by § 5(b) to make any affirmative use of the property that the national interest in time of war might require. But we are here concerned solely with the right to sue on a debt not with the right to sue to reclaim property nor with any question concerning the satisfaction of any judgment which may be obtained. We only hold that the right to sue on a debt granted by § 9(a) has not been wholly withdrawn and that § 9(e) is not applicable to this class of claims. We cannot see that the allowance of a suit on a debt as prescribed by § 9(a) collides with the policy of § 5(b). That does not in any way cause interference with the administration of the vested property pursuant to § 5(b). Sec. 9(a), to be sure, contains a provision which prescribes how any judgment obtained in the suit against the Custodian or Treasurer shall be satisfied,[6] and

experience under freezing control have demonstrated to be advisable. The provisions of section 301 would permit the establishment of a complete system of alien property treatment. It vests flexible powers in the President, operating through such agency or agencies as he might choose, to deal with the problems that surround alien property or its ownership or control in the manner deemed most effective in each particular case. In this respect the bill avoids the rigidity and inflexibility which characterized the alien property custodian law enacted during the last war. The necessity for flexibility in legislation on this subject is accentuated by the vastness of the alien property problem confronting the Government today. At the peak of his activity, the Alien Property Custodian of the last war administered property valued at something over $500,000,000. Today there is over $7,000,000,000 worth of property already subject to the existing control."

And see S. Rep. No. 911, 77th Cong., 1st Sess., p. 2.

[6] "If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated."

also allows suits to reclaim property.[7] Whether those provisions have been superseded by § 5(b) or whether § 5(b) contains a grant of authority which may be so exercised as to prevent the reclamation of property or the payment of the judgment or to alter the procedure for reclamation or payment as prescribed in § 9(a) are distinct questions. Here we are dealing solely with the right to maintain a suit on a debt, a right which is not shown to collide with § 5(b). We reserve decision on the other questions.

*Affirmed.*

Mr. Justice JACKSON took no part in the consideration or decision of this case.

[7] Sec. 9(a) allows suits by "Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States", as well as suits by any such person to whom a debt may be owing from any enemy or ally of enemy whose property has been seized.

# SUPREME COURT OF THE UNITED STATES.

No. 76.—October Term, 1945.

James E. Markham, Alien Property Custodian, and W. Alexander Julian, Treasurer of the United States, Petitioner,
*vs.*
Hartwell Cabell.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 10, 1945.]

Mr. Justice Burton, concurring.

A review of the development of the Trading with the Enemy Act from its inception in 1917, early in World War I, further discloses its dual purposes in a way that throws needed light upon its meaning at the time of this proceeding in 1944, late in World War II.

It originated as H. R. 4960, June 11, 1917, drafted in the form of permanent legislation. Its purposes were explained by House and Senate Committees in terms suited to permanent legislation.[1] Before its passage, several amendments were inserted which limited specific sections of the Act to "the present war"[2] but none of these so limited § 9 or the Act as a whole. Other sections were limited by references made to specific nations and still others by references to specific dates. Later amendments added other pro-

[1] "The chief objects of this bill are (1) to recognize and apply concretely, subject to definite modifications, the principle and practice of international law interdicting trade in time of war, and (2) to conserve and utilize upon a basis of practical justice enemy property found within the jurisdiction of the United States. . . . According to American law one of the immediate consequences of war is to put an end to all commercial relations between citizens or subjects of belligerent nations." H. R. Rep. No. 85, 65th Cong., 1st Sess. 1, June 21, 1917. "To summarize the purpose of the bill is not to create new international rules or practices, but to define and mitigate them." H. R. Rep. No. 85, *supra*, p. 2. "The purpose of this bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property and property rights of enemies and their allies in this country pending the war." Sen. Rep. No. 113, 65th Cong., 1st Sess. 1, Aug. 31, 1917.

[2] The conference report inserted five such references. H. R. Rep. No. 155, 65th Cong., 1st Sess., 3, 6, September 21, 1917.

visions confined to World War I. However, no general limitation ever has confined the Act as a whole or its main structural provisions to a specific war, specific nations or specific dates. In this way the Act has met the immediate needs of its time and also has stood ready to meet additional wars and additional enemies. The beginning of World War II in 1941 accordingly found many provisions of the Act, such as § 9(e), limited by references to World War I and others, such as § 9(a), not so limited.

By its terms, its nature and its history, § 9(e)[3] from its inception, has related solely to World War I. Its relation to World War I is apparent on its face. Its first clause refers to a restriction on the allowance of a debt "to any person who is a citizen or a subject of any nation *which was associated with the United States in the prosecution of the war.*" These words, enacted in 1920 (41 Stat. 977, 980) and reenacted in 1923 (42 Stat. 1511, 1514), refer to any nation "associated" with us in World War I. "Associated" was then a word of art. Its second clause reads, "*nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917.*" This refers to the effective date of the original Trading with the Enemy Act. This date provides a reasonable test for debts to be allowed against property seized by the Alien Property Custodian in connection with World War I. It has no reasonable relation to a war beginning in 1941. To require claims to be more than 24 years old in order to be acceptable is beyond reason. The last clause reads, "*nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been*

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[3] Section 9(e) of the Trading with the Enemy Act, as last amended, August 24, 1937 (50 U. S. C. App. 9(e)), is as follows:

"No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which *was associated* with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States: *Provided*, That any arrangement made by a foreign nation for the release of money and other property of American citizens and certified by the Secretary of State to the Attorney General as fair and the most advantageous arrangement obtainable shall be regarded as meeting this requirement; *nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917*, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder; *nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the Settlement of War Claims Act of 1928* (Act March 10, 1928, ch. 167)." (Italics supplied.)

*made, prior to the date of the enactment of the Settlement of War Claims Act of 1928.*" This clause means nothing when applied to a claim like the present one which was not earned until 1935.

Section 9(e) as thus earmarked prescribes a natural limitation upon claims to be allowed against enemy property seized in World War I. As such it is reasonable. It is not possible, however, that Congress intentionally chose this indirect way of saying that American creditors may assert just claims against assets of debtors whose properties were seized in World War I, but not against assets of debtors whose properties might be held in custody by the Alien Property Custodian as a result of future wars.

The legislative history emphasizes this. The original Trading with the Enemy Act, when enacted, October 6, 1917 (40 Stat. 411), contained two kinds of provisions. The general structure of the Act was in terms of permanent legislation. Section 2 in defining terms refrained from reference to the war then in progress or to specific nations or fixed dates. For example, it provided that:

> "The words 'the beginning of the war,' as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.
>
> "The words 'end of the war,' as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this Act." (50 U. S. C. App., § 2(c)).

Sections 3(a), (b) and (c) dealt in like terms with general procedure for trading under Presidential license in time of war. Section 5(b) dealt with the regulation of foreign exchange, coin export, transfers of credit, etc. Section 6 authorized the President to appoint an official to be known as the Alien Property Custodian. Section 9 provided for the assertion of property claims and debt claims on behalf of any person not an enemy or ally of enemy against certain assets in the possession of the Custodian.

On the other hand, certain other provisions were, from the beginning, earmarked as temporary provisions. For example, § 3(d) referred to certain censorship to be established "during the present war." Section 4(a) referred to certain German insurance companies. Section 4(b) referred to "the present war." Similar references to "the present war" occurred in §§ 11, 13 and 14.

Section 9 is typical. Originally it was all of a general and permanent nature. It has been amended nine times. Its first paragraph has been preserved, with slight changes, as § 9(a) in the form of permanent legislation. On the other hand, many new subsections of § 9, including § 9(e), contain provisions suited only to transactions growing out of World War I. The first amendment to § 9 was that of July 11, 1919 (41 Stat. 35). This threatened to confuse the situation. It inserted in the first paragraph a proviso referring to (41 Stat. 36) "all property *heretofore* determined by the President to have been held . . . for the benefit of a person who was an enemy or ally of enemy" and to "territory of any nation associated with the United States in the prosecution of the war which *was* occupied by the military or naval forces of *Germany or Austria-Hungary, or their allies.*" (Italics supplied.) On June 5, 1920, however, the second amendment (41 Stat. 977) corrected this and set the pattern which has since been followed. It reenacted the whole of § 9 and, in doing so, removed from its first paragraph the 1919 proviso. It restored that paragraph to general terms and gave it the designation of § 9(a) which it has retained. Congress, at the same time, added several subsections most of which contained express references to Germany and Austria-Hungary. Section 9(e) first appeared at that time. From the beginning, § 9(e) contained its present references to "any nation which *was associated* with the United States in the prosecution of the war" and to the requirement that a debt in order to be allowed under the section must have been "*owing to and owned by the claimant prior to October 6, 1917.*" Later amendments emphasized this restriction of § 9(e) to World War I, while preserving the general and permanent character of § 9(a).[4] Distortion of the meaning of statutory language would

[4] The later amendments were those of February 27, 1921 (41 Stat. 1147), applying §§ 9(b)(2) and (3) to situations where a woman "prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary;"

December 21, 1921 (42 Stat. 351), amending § 9(a) to permit suits to be brought eighteen months instead of six months after the "end of the war." The amendment did not insert any calendar date relating to World War I although peace had been declared July 2, 1921. The words "end of the war" must, therefore, be given their general meaning applicable to all wars as provided in the definitions in § 2, *supra*;

December 27, 1922 (42 Stat. 1065), amending § 9(a) to permit suits to be brought 30 months instead of 18 months after the "end of the war;"

March 4, 1923 (42 Stat. 1511), reenacting the whole § 9. In § 9(a) it omitted all limitation on the time within which suits might be brought. It added new subsections especially adapted to World War I claims such as

result not from limiting § 9(e) to World War I but from applying it to World War II.

It is argued that to exclude the defense which is claimed to be supplied by § 9(e) against debts payable out of property vested in the Custodian during World War II, under § 5(b), as amended by the First War Powers Act, December 18, 1941 (55 Stat. 839), will result in inequities. For example, it is urged that § 5(b) was amended in 1941 to permit vesting in the Custodian of property of "any foreign country or national thereof." However, §9(a) has not been amended correspondingly to permit the assertion of claims to the payment of debts out of the property of a foreign national as distinguished from that of an "enemy or ally of enemy." From this it is argued that Congress should not be regarded as having intended to create such inequities, if there be such, between creditors of "enemies" and those of other "foreign nationals," through the passage of the First War Powers Act and that, therefore, Congress must be regarded as having intended that § 9(e) eliminate all creditors' claims under § 9(a) against property of enemies and of allies of enemies, unless filed or claimed before March 10, 1928.

This amounts to an argument that because subsequent legislation has produced inequitable results, therefore pre-existing legislation should be reinterpreted so as to eliminate these subsequently created inequities. If the meaning of § 9(e) was restricted to World War I prior to the enactment of the First War Powers Act, the First War Powers Act cannot change the meaning of § 9(e) without amending it and it does not amend it. A suggestion that amendatory legislation might now be helpful is found in bills recently

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a restriction against claims on behalf of citizens of the United States naturalized since November 11, 1918;

May 7, 1926 (44 Stat. 406), adding §§ 9(b)(3A) and (3B) as to citizens of Germany, Austria, Hungary or Austria-Hungary;

March 10, 1928 (45 Stat. 254-279). This was the "Settlement of War Claims Act of 1928." It dealt expressly with World War I. It was concerned with such subjects as the "Mixed Claims Commission" and "The Tripartite Claims Commission." It amended the Trading with the Enemy Act in many details as to World War I claims and added many new provisions as to those claims. It added subsections to § 9. In § 9(e) it inserted the clause which required that notices of claims must have been filed or applications for claims must have been made before the enactment of the Settlement of War Claims Act of 1928;

August 24, 1937 (50 Stat. 748), amending § 9(e) by inserting the proviso as to arrangements which will be regarded as meeting the requirements of reciprocal rights.

introduced in Congress with the support of the Alien Property Custodian. The hearings emphasize that need.[5]

Furthermore, the interpretation now urged to offset inequities would create other inequities. For example, the proposed interpretation would result in an inequity to the respondent in the present case. He is an American citizen with an admittedly good claim for about $7,000 earned in 1935, against an enemy corporation, assets of which in the hands of the Alien Property Custodian are ample to pay the claim. The claimant filed his claim within the one year prescribed in the order vesting the assets of the enemy company in the Custodian.[6] The claimant is now met with a defense that he cannot recover because he failed to file his claim before March 10, 1928, which was seven years before it was earned and fourteen years before the assets had been vested in the Custodian with whom he is asked to file his notice. The decision as to the existence of inequities under the 1941 amendment and as to the best way to deal with them lay with Congress in 1941 and still lies there.

The Act never has had a termination clause and was expressly excluded from the Joint Resolution of March 3, 1921 (41 Stat. 1359), which declared that certain acts of Congress should be construed as if the war had ended and the present or then existing emergency had expired. The Settlement of War Claims Act of 1928[7] was engrafted upon the Trading with the Enemy Act without affecting its general structure or its life. In the natural course of events World War I claims ultimately would have been disposed of and yet the main structure of the Act would have remained on the books ready for later use. That this was contemplated is evidenced by Executive Order 6694, May 1, 1934.[8] This was issued under authority of the Reorganization Act of March 3, 1933 (47 Stat. 1489, 1517). Section 1 expressly abolished the Office of the Alien Property Custodian and transferred the "authority, rights, privileges, powers, and duties conferred and imposed on the Alien Property Custodian by law and/or Executive Order . . . to the

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[5] S. 1940, H. R. 4840 and H. R. 5031 were introduced in the 78th Congress. H. R. 1530 was introduced in the 79th Congress, January 16, 1945. See Hearings on H. R. 4840 before Subcommittee No. 1 of the Committee on the Judiciary for the House of Representatives, 78th Cong., 2d Sess., Serial No. 18, June 9-15, 1944.

[6] See note 10 *infra*.

[7] See note 4 *supra*.

[8] 28 C. F. R. § 4.1.

Department of Justice, to be administered under the supervision of the Attorney General." This incorporated the office of the Alien Property Custodian into the permanent structure of the Government. Within the Department of Justice the rights, privileges, powers and duties conferred upon the Alien Property Custodian were placed under the Attorney General and were later exercised largely through him or the Assistant Attorney General in charge of the Claims Division in the Department of Justice. On May 15, 1939, by Executive Order 8136, 4 Fed. Reg. 2044, all power and authority conferred upon the President by §§ 9, 12, 20 and 21 of the Trading with the Enemy Act and all power and authority which the President under that Act had theretofore ordered to be exercised through the Alien Property Custodian were vested in and required to be exercised through the Attorney General or the Assistant Attorney General in charge of the Claims Division in the Department of Justice.

In this status § 9(a) and other permanent portions of the Trading with the Enemy Act awaited the next war. If left in that form there would have been no inequities other than those which had existed in World War I. The Act would have been administered much as it was in World War I except that it would have been administered through the Attorney General and the Department of Justice instead of through an independent agency. In 1940, at the approach of World War II, the Act had much the same structure in §§ 9(a), 9(e) and 5(b) as it had in 1928. The inequities discussed in this proceeding arose later from the substantial expansion of § 5(b).[9]

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[9] The development of the law especially affecting § 5(b) which took place during the national emergency prior to World War II, did not change the situation although it did emphasize the connection of the Trading with the Enemy Act with the permanent structure of the Federal Government.

For example, on March 9, 1933 (48 Stat. 1), § 5(b), relating to foreign exchange, export or hoarding of coin, etc., was amended as a part of the legislative program to meet the national emergency in banking. The amendment thus applied the power of the President under this Act to the internal conditions of the country rather than to its international relations. This was supplemented by Executive Order [illegible], January 15, 1934, 31 C. F. R. § 130.

Following the transfer of the office of the Alien Property Custodian to the Department of Justice, § 9(e) received a slight amendment on August 24, 1937. (50 Stat. 748.) See note 4 *supra*. Additional responsibility under the Act was placed upon the Attorney General or the Assistant Attorney General in charge of Claims on May 15, 1939. Executive Order 8136, 4 Fed. Reg. 2044. On April 10, 1940, the President issued Executive Order 8389, 5 Fed. Reg. 1400, which, under authority of § 5(b), extended control over prop

On December 18, 1941 came the First War Powers Act. 55 Stat. 839. No statutory or executive action was needed to make the machinery of the Trading with the Enemy Act available. It was already in effect with the full statutory powers of the Alien Property Custodian vested in the Attorney General. Title III of the First War Powers Act expressly recognized the Trading with the Enemy Act by amending only § 5(b) of it. Congress also confirmed all actions already taken "under the Trading with the Enemy Act" which would have been authorized "if the provisions of this Act [First War Powers Act] and the amendments made by it had been in effect."

On March 11, 1942, the President issued Executive Order 9095, 7 Fed. Reg. 1971, establishing in the Office for Emergency Management of the Executive Office of the President, the Office of Alien Property Custodian, at the head of which there again would be an Alien Property Custodian appointed by the President. By Executive Order 9142, April 21, 1942, 7 Fed. Reg. 2985, expressly acting under the Constitution and laws of the United States, and in particular under Title I of the First War Powers Act, the President transferred "for the continuance of the present war and for six months after the termination thereof" to "the Alien Property Custodian provided for by Executive Order No. 9095," everything that had been transferred to the Attorney General by Executive Order 6694 of May 1, 1934, or to the Assistant Attorney General in charge of the Claims Division of the Department of Justice under Executive Order 8136, May 15, 1939, 4 Fed. Reg. 2044.

On July 6, 1942, Executive Order 9095 was amended by Executive Order 9193, 7 Fed. Reg. 5205. The Alien Property Custodian "provided for by Executive Order No. 9095", as amended by Executive Order 9193, was thus given the powers of the Trading with the Enemy Act as fully as in World War I and also additional powers provided through amendments including the expansion of powers under § 5(b). These authorizations carried

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erty in which Norway or Denmark or any national thereof had an interest. This action was confirmed and further supplemented by the Act of May 7, 1940 (54 Stat. 179). This was substantially extended to many other nations by Executive Order 8785, June 14, 1941, 6 Fed. Reg. 2897; Proclamation No. 2497, July 17, 1941, 6 Fed. Reg. 3555; Executive Order 8832, July 26, 1941, 6 Fed. Reg. 3715; Executive Order 8839, July 30, 1941, 6 Fed. Reg. 3823; Executive Order 8900, September 15, 1941, 6 Fed. Reg. 4795; Executive Order 8963, December 9, 1941, 6 Fed. Reg. 6348.

power to issue regulations particularly in connection with the vesting of property as was done by the vesting orders in this case.[10] The Alien Property Custodian in taking over the administration of the Trading with the Enemy Act is entitled to the full scope of its permanent provisions whether found in § 5(b) or § 9(a) or elsewhere.

For these reasons, § 9(e) does not present a ground for dismissal of the complaint which depends upon § 9(a) and the decision of the Circuit Court of Appeals should be affirmed.

Mr. Justice FRANKFURTER, having concurred in the Court's opinion, also joins in these views.

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[10] "Without limitation as to any other powers or authority of the Secretary of the Treasury or the Alien Property Custodian under any other provision of this Executive Order, the Secretary of the Treasury and the Alien Property Custodian are authorized and empowered, either jointly or severally, to prescribe from time to time, regulations, rulings, and instructions to carry out the purposes of this Executive Order." Sec. 4, Executive Order 9193, July 6, 1942, 7 Fed. Reg. 5205. See also, provisions of the Vesting Orders as to notice of claims against the property involved in this proceeding.

Each of the Vesting Orders cited in the Court's opinion provides: "Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim." The amended complaint in this case alleges, "A notice of this claim dated and verified January 19th, 1943, was filed with the Alien Property Custodian on or about that date and by him assigned the number F-38-98-1. An amended and supplemental notice of the claim dated and verified May 1st, 1944, has, at the suggestion of the Alien Property Custodian, been executed and filed and a new number, to wit, 280 has been assigned thereto."